

\* **HIGH COURT OF DELHI : NEW DELHI**

+ **ITA No. 876/2005**

% Judgment reserved on: 22nd January , 2007

Judgment delivered on: 29th January , 2007

COMMISSIONER OF INCOME TAX V  
NEW DELHI

..... Appellant

Through Mr.Sanjeev Sabharwal

versus

M/s Regency Express Builders P.Ltd.  
A-3, Pamposh Enclave,  
New Delhi

..... Respondent

Through

Coram:

**HON'BLE MR. JUSTICE MADAN B. LOKUR**  
**HON'BLE MR. JUSTICE V.B. GUPTA**

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|------------------------------------------------------------------------------|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not?                                        | Yes |
| 3. Whether the judgment should be reported in the Digest?                    | Yes |

**V.B. GUPTA, J.**

Revenue is aggrieved by the order dated 25th February, 2005 passed by Income Tax Appellate Tribunal, Delhi Bench "E" vide which the appeal filed by Revenue

was dismissed for the Assessment year 1999-2000.

2. The facts giving rise to present appeal are that M/s Regency Express Private Limited (hereinafter referred to as Assessee) had filed its return on 1st December, 1999 declaring a loss of Rs.1785/- for the Assessment Year 1999-2000.

3. The Assessing Officer issued notice under Section 143(2) of the Income Tax Act, 1961 (for short 'the Act') to the Assessee on 29th December, 2000 and the said notice was sent at the address given by the Assessee in its return. The said notice was duly served on the Assessee which was received by one "Gunanand" and according to this notice, the date of hearing was 11th January, 2001.

4. In pursuance to the aforesaid notice, Assessee's representative Shri Harish Bansal, Chartered Accountant attended the hearing on 11th January, 2001 and was asked to furnish the various information.

5. Next, the hearing for assessment was taken up on 7th February, 2001 and on that day one Shri Mohammad Aslam, Assistant with M/s S. Prasad and Co., Chartered Accountant appeared and filed letter dated 7th February,

2001 seeking adjournment and accordingly the matter was adjourned. Thereafter, in the presence of Assessee/ representative, assessment order dated 27th March, 2002 was passed under Section 143(3) of the Act.

6. Assessee being dissatisfied with the order of the Assessing Officer, filed an appeal before the Commissioner of Income Tax (Appeal) and for the first time raised objections stating that no notice was served upon him within the period of 12 months from the end of the month in which the return of Income Tax was filed; that the notice has not been served either on the Assessee, directors or any of its authorized agents.

7. Commissioner of Income Tax (Appeal) accepted the contentions of the Assessee and held that the notice has neither been served within time nor on duly authorised person.

8. Revenue being dissatisfied with the order of the Commissioner of Income Tax (Appeal), filed an appeal before the Income Tax Appellate Tribunal and the Tribunal dismissed the appeal of the Revenue and canceled the impugned assessment.

9. On these facts, we framed the following substantial question of law for consideration:

“Whether service of notice U/s 143 (2) to employee of the Assessee within limitation is valid service specially when Assessee raises no objection before Assessment Officer and participates in the proceedings?”

10. It has been contended by learned counsel for the Revenue that notice in question was issued on 29th December, 2000 that is within one year from the end of the month of filing of return on 1st December, 1999 and was within limitation and the same was served on the Assessee on 29th December, 2000 and was duly accepted by one of the employees of the Assessee. The representative of the Assessee attended the hearing on 11th January, 2001 and even filed his authority letter and thereafter on subsequent hearing also representative of the Assessee was present and no such objection was raised.

11. On the other hand, it has been contended by learned counsel for the Assessee that no notice as required under the law has been served upon the Assessee or any of its authorised agents.

12. As per Annexure-I, which is copy of notice under

Section 143(2) of the Act, it has been received by one “Gunanand” on 29th December, 2000. It has nowhere been pleaded on behalf of the Assessee either before Assessing Officer, Commissioner of Income Tax (Appeal) or the Tribunal, that Gunanand is not their employee or he is a fictitious person.

13. Even assuming for arguments sake that no notice under Section 143(2) of the Act has been received on behalf of the Assessee on 29th December, 2000, then there was no occasion for Assessee or his representative to appear before the Assessing Officer on 11th January, 2001.

14. The fact that on 11th January, 2001 Mr Harish Bansal, Chartered Accountant appeared before the Assessing Officer and filed his Power of Attorney and was asked to file details/information and thereafter on 7th February, 2001, one Shri Mohammad Aslam, Assistant alongwith M/s. S. Prasad and Co., Chartered Accountant appeared before the Assessing Officer and filed a letter seeking adjournment, goes on to show that notice under Section 143(2) of the Act has been duly served on the Assessee through his representative on 29th December, 2000 and that is why the

representatives of the Assessee have been appearing before the Assessing Officer in pursuance of the notice.

15. Accordingly, we hold that the Income Tax Appellate Tribunal erred in observing that the notice under Section 143(2) of the Act has not been served upon the Assessee and the assessment stands vitiated.

16. The substantial question of law is answered in the affirmative, in favour of the Revenue and against the Assessee.

17. Present appeal filed by Revenue is accordingly allowed and order passed by the Commissioner of Income Tax (Appeal) canceling the impugned assessment is set aside and the matter is remanded back to the Commissioner of Income Tax (Appeal) to consider the matter afresh in accordance with the law.

**(V. B. GUPTA)**  
**JUDGE**

**JANUARY 29, 2007**  
**rs**

**(MADAN B. LOKUR)**  
**JUDGE**